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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,993	09/18/2000	Gangfeng Cai	2039.006100	4102

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EXAMINER

NOLAN, SANDRA M

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 12/13/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/664,993

Applicant(s)

CAI ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims

1. Claims 1-17 are pending.

Rejections Maintained

2. The 35 USC 103 rejection of claims 1-12 and 16-17 as unpatentable over Ching (US 5,744,246) in view of Nordstrom (US 3,536,687), as stated in section 7 of the 07November 2001 Office Action (Paper No. 8), is maintained for reasons of record.
3. The 35 USC 103 rejection of claims 13-15 as unpatentable over Ching and Nordstrom taken with Katsumoto et al (US 6,139,770), as recited in section 8 of Paper No. 8, is maintained for reasons of record.
4. The 35 USC 112 rejection of claims 1-17 for new matter, as set out in section 6 of the 13 June 2002 Office Action (Paper No. 15), is maintained for reasons of record.

Rejection Withdrawn

5. The 35 USC 112 rejection of claims 1-17 for indefiniteness, as set out in section 8 of Paper No. 15, is withdrawn in view of applicants' arguments in Paper No. 16.

Response to Arguments

6. Applicant's arguments filed in Paper No. 16 have been fully considered but they are not persuasive.

The arguments in Paper No. 16 will be responded to in the order in which they were presented.

On page 2 of Paper No. 16, applicants argue that the phrases "providing substantially all of the interior surface of the rigid container" and "substantially

coextensive” are not new matter because they are supported by the specification at pages 8, 11, 12 and Examples 2-10.

However, the examiner is unable to find support for the quoted language in any of the passages mentioned.

On page 2, applicants argue that the phrases relate to inherent properties.

However, the record does not contain any evidence to support the allegation that the features “providing substantially all of the interior surface of the rigid container” and “substantially coextensive” are inherent properties of the embodiments referred to at pages 8, 11, 12 and Examples 2-10.

On page 2, applicants argue that the indefiniteness rejection is improper.

This argument has been rendered moot by the withdrawal of the indefiniteness rejection.

On page 3, applicants argue that the 35 USC 103 rejection of claims 1-12 and 16-17 is improper because Ching, which applicants admit refers to oxygen scavenging ribbons in containers, makes it containers using a three-step process, while applicants make their containers via one step.

However, this argument relates to the process by which the claimed containers are made and not to the containers themselves. Process limitations are not given weight in considering the patentability of produce claims of the type presented here. Accordingly, the process differences are not persuasive of patentability.

On page 4, applicants argue that the 35 USC 103 rejection of claims 13-15 is improper because, while Katsumoto teaches what is relied to teach, the combination of

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Ching and Nordstrom—which is the basis of both section 103 rejections—is improper because “the specific three-layer structure of the present claims” is not taught by Katsumoto.

However, Katsumoto is not relied upon for teaching the structure. It is relied upon to teach photoinitiators, which it does.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

SMN/smn
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